

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 551 – SB 833

March 6, 2013

**SUMMARY OF ORIGINAL BILL:** Creates a violation for construction services providers for understating or concealing the amount of the construction services provider's payroll, the number of construction services provider's employees, or any of the construction services provider's employees' duties. A violation is punishable by a fine of up to the greater of \$1,000 or 1.5 times the average yearly workers' compensation premium for such construction services provider.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue –

Exceeds \$62,900/Each Year FY13-14 thru FY17-18/General Fund  
Exceeds \$198,100/Each Year FY18-19 thru FY22-23/General Fund  
\$245,300/FY23-24 and Subsequent Years/General Fund

Exceeds \$800/Each Year FY13-14 thru FY16-17/Second Injury Fund  
Exceeds \$14,000/FY17-18 and Subsequent Years/Second Injury Fund

Exceeds \$200/Each Year FY13-14 thru FY16-17/TOSHA  
Exceeds \$2,800/FY17-18 and Subsequent Years/TOSHA

Exceeds \$293,500/Each Year FY13-14 thru FY17-18/  
Unemployment Insurance Trust Fund  
Exceeds \$869,800/Each Year FY18-19 thru FY22-23/  
Unemployment Insurance Trust Fund  
\$1,092,600/FY23-24 and Subsequent Years/  
Unemployment Insurance Trust Fund

Increase State Expenditures –

\$7,600/One-time/Employee Misclassification Education and  
Enforcement Fund  
\$362,400/Recurring/Employee Misclassification Education and  
Enforcement Fund

**SUMMARY OF AMENDMENT (003930):** Adds language to the original bill requiring revenue generated from additional penalties to be deposited in the Employee Misclassification Education and Enforcement Fund. Requires this money to be used for computer expenditures and for additional employees to investigate misclassification activity. Requires the Department of Labor and Workforce Development to refer cases to the Tennessee Bureau of Investigation.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

### **Increase State Revenue –**

**Exceeds \$62,100/Each Year FY13-14 thru FY17-18/  
Employee Misclassification Education and Enforcement Fund  
Exceeds \$184,100/Each Year FY18-19 thru FY22-23/  
Employee Misclassification Education and Enforcement Fund  
\$231,300/FY23-24 and Subsequent Years/  
Employee Misclassification Education and Enforcement Fund**

**Exceeds \$800/Each Year FY13-14 thru FY16-17/General Fund  
Exceeds \$14,000/FY17-18 and Subsequent Years/General Fund**

**Exceeds \$800/Each Year FY13-14 thru FY16-17/Second Injury Fund  
Exceeds \$14,000/FY17-18 and Subsequent Years/Second Injury Fund**

**Exceeds \$200/Each Year FY13-14 thru FY16-17/TOSHA  
Exceeds \$2,800/FY17-18 and Subsequent Years/TOSHA**

**Exceeds \$293,500/Each Year FY13-14 thru FY17-18/  
Unemployment Insurance Trust Fund  
Exceeds \$869,800/Each Year FY18-19 thru FY22-23/  
Unemployment Insurance Trust Fund  
\$1,092,600/FY23-24 and Subsequent Years/  
Unemployment Insurance Trust Fund**

### **Increase State Expenditures –**

**\$7,600/One-time/Employee Misclassification  
Education and Enforcement Fund  
\$362,400/Recurring/Employee Misclassification  
Education and Enforcement Fund**

Assumptions for the bill as amended:

- The Department of Labor and Workforce Development estimates (DLWD) 1,080 investigations per year.
- Based on similar investigations, DLWD anticipates 10 percent, 108 (1,080 x 10%) of investigations resulting in an assessed penalty in the first year.

- DLWD estimates the average penalty to be \$1,289.
- A collection rate of 44.64%.
- A recurring increase in state revenue exceeding \$62,144 ( $108 \times \$1,289 \times 44.64\%$ ) each year in FY13-14 through FY17-18 to the Employee Misclassification Education and Enforcement Fund.
- Based on the development of similar investigations, the efficiency of investigations and the number of assessed penalties is expected to increase in subsequent years.
- Approximately 320 penalties assessed annually by year five.
- A recurring increase in state revenue exceeding \$184,131 ( $320 \times \$1,289 \times 44.64\%$ ) each year in FY18-19 through FY22-23 to the Employee Misclassification Education and Enforcement Fund.
- Approximately 402 penalties assessed annually by year ten.
- A recurring increase in state revenue of \$231,315 ( $402 \times \$1,289 \times 44.64\%$ ) in FY23-24 and subsequent years to the Employee Misclassification Education and Enforcement Fund.
- The Department of Labor and Workforce Development anticipates an increase in compliance by employers paying workers' compensation premiums.
- The first year, at least an additional \$39,000 in premiums will be paid. This amount will increase every year in the subsequent four years.
- The tax on premiums is 4.0 percent with an additional 0.4 percent surcharge earmarked for the Tennessee Occupational Safety and Health Act (TOSHA).
- Fifty percent of the 4.0 percent tax is earmarked for the Second Injury Fund; the remaining 50 percent is allocated to the General Fund.
- An increase in state revenue exceeding \$1,560 ( $\$39,000 \times 4.0\%$ ) with \$780 allocated to the Second Injury Fund and \$780 allocated to the General Fund, and \$156 to TOSHA ( $\$39,000 \times 0.4\%$ ) in FY13-14 through FY16-17.
- In FY17-18 and subsequent years, increased revenue to the General Fund is expected to exceed \$14,000 and revenue to the Second Injury Fund is expected to exceed \$14,000.
- In FY17-18 and subsequent years, increased revenue to TOSHA is expected to exceed \$2,800.
- There will be an increase in payments of the unemployment tax on payrolls due to increased compliance.
- The payroll tax applies to \$9,000 of wages. A 6.04 percent tax rate. An average of five employees per firm charged with a penalty.
- An increase in state revenue to the Unemployment Insurance Trust Fund exceeding \$293,544 ( $108 \text{ penalties} \times \$9,000 \times 5 \text{ employees} \times 6.04\%$ ) each year FY13-14 through FY17-18.
- An increase in state revenue to the Unemployment Insurance Trust Fund exceeding \$869,760 ( $320 \text{ penalties} \times \$9,000 \times 5 \text{ employees} \times 6.04\%$ ) each year FY18-19 through FY22-23.
- A recurring increase in state revenue to the Unemployment Insurance Trust Fund of \$1,092,636 ( $402 \text{ penalties} \times \$9,000 \times 5 \text{ employees} \times 6.04\%$ ) in FY23-24 and subsequent years.
- According to DLWD, each inspector will perform 15 inspections on average each month for a total of 180 per year ( $15 \text{ inspections} \times 12 \text{ months}$ ).

- Six additional Workers' Compensation Specialist 1 positions will be required (1,080/180).
- An average salary of \$45,886 for a recurring increase in state expenditures of \$275,316 (6 positions x \$45,886). A recurring increase in state expenditures of \$77,375 for benefits.
- Recurring state expenditures of \$1,625 per position for office supplies and expenditures. A total recurring increase in state expenditures of \$9,750 (6 positions x \$1,625).
- The total recurring increase in state expenditures for the six positions will be \$362,441 (\$9,750 + \$77,375 + \$275,316).
- One-time state expenditures associated with these six positions will be \$7,629.
- All expenditures will be paid from the Employee Misclassification Education and Enforcement Fund.

### **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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